COVENANTS RUNNING WITH THE LAND—ESTABLISHMENT OF RAILROAD STATION.—Suit in equity to compel defendant to stop its trains at a road crossing on land of plaintiff in compliance with a covenant contained in a deed executed to defendant by plaintiff's devisor, which deed conveyed to defendant a right of way over the lands of said devisor. Defendant failed to perform the covenant, although it did stop trains at regular stations near said road crossing. Defendant contended that the plaintiff could not maintain the action, first, because the covenant was not one that ran with the land, and secondly, because it was against public policy and void. *Held,* that the covenant ran with the land, but that it was void as being against public policy. *Ford* v. *Oregon Electric Ry. Co.* (Ore. 1911) 117 Pac. 809.

Covenants made with the owner of land, to which they relate, may be enforced by each successive transferee, provided he be in of the same estate as the original covenantee. See 1 SMITH'S LEADING CASES, note on *Spencer's Case,* Ed. 11, p. 75. A covenant which is beneficial to or binding on the owner, as owner, and on or to no other person, runs with the land. *Aiken* v. *Albany, etc. Co.,* 26 Barb. 289, 293. See *Vyvyan* v. *Arthur,* 1 B. & C. 410, 417; *Vernon* v. *Smith,* 5 Barn. & Ad. 1; 11 CYC. 1081. Covenants are to be regarded as affecting the land, though not directly to be performed upon it, provided they tend to increase or diminish its value in the hands of the holder. *Van Rensselaer* v. *Smith,* 27 Barb. 104; *Gibson* v. *Holden,* 115 Ill. 199, 3 N. E. 282. A covenant which may run with the land can do so only when there is a subsisting privity of estate between the covenantor and the covenantee, 11 CYC. 1081, and cases cited there; *Cole* v. *Hughes,* 54 N. Y. 444; *Van Rensselaer* v. *Smith, supra.* If there is no privity of estate between the contracting parties the assignee will not be bound, but if any estate passes so as to create privity, it is sufficient to carry the covenant. 11 CYC. 1083, and cases cited; 2 WASHBURN REAL PRO. Ed. 4, pp. 284, 285; *Van Rensselaer* v. *Smith, supra; Gilmer* v. *Mobile, etc. Ry. Co.,* 79 Ala. 569, 572, 58 Am. Rep. 623 (wherein it was held that a similar covenant ran with the right of way granted as a burden thereon and was enforceable against the assignee of the covenantor); *Hurxthal* v. *Boom Co.,* 53 W. Va. 87, 44 S. E. 520, 97 Am. St. Rep. 954. The court in the principal case stated that covenants to furnish gas for lighting and fuel, to be used in certain buildings upon certain lands, ran with the land, citing *Indiana National Gas Co.* v. *Hinton,* 159 Ind. 398, 64 N. E. 224, as also a covenant to furnish water to be used upon the land, citing *Stanislaus Water Co.* v. *Bachman,* 152 Cal. 716, 93 Pac. 858, 15 L. R. A. (N. S.) 359; *Ruhnke* v. *Aubert,* (Ore.) 113 Pac. 38; and *Tone* v. *Tillamook* (Ore.) 114 Pac. 938. Further that the covenant in the principal case was in the nature of a reservation, providing for a means of travel to and from the land mentioned and over the right of way granted. That had the covenant provided for a bridlepath or a footpath for the use of the owner or people occupying the farm, along the right of way, there would be no question that such a covenant would run with the land. That since covenants to furnish water, electricity for light, or telephone service for the benefit or convenience of the owner and those residing on certain farms, to which there is no other valid objection, have been held to run with the land, upon the same principle a covenant to

furnish car service for their benefit should be held a covenant running with the land. Tested by the foregoing it appears that the covenant was made with the owner of the land, and although it did not relate to a thing *in esse*, it contained the words "successors and assigns," was for the benefit of the owner of the land, as owner, or occupants of the farm only, and apparently for the benefit of no other person, and there was present the requisite privity between the covenantor and covenantee. It logically follows that the covenant ran with the land and was enforceable by plaintiff, were it otherwise free from objection. *Accord*: *Gilmer* v. *Mobile, etc. Ry. Co., supra; Georgia Southern R. Co.* v. *Reeves,* 64 Ga. 492; *Whalen* v. *Baltimore, etc. Ry. Co.,* 108 Md. 11, 69 Atl. 390. The covenant was, however, held to be unenforceable because of public policy: see 153.

DAMAGES—PENALTY OR LIQUIDATED DAMAGES—CONSTRUCTION OF STIPULATION IN CONTRACT.—Plaintiff seeks to recover balance due him on a building contract. The agreement sued on contained a stipulation that $300.00 per week should be paid by contractor for failure to complete structure within prescribed time. Defendant counterclaims for five months delay. *Held,* where the actual damages resulting from the failure to complete a building by the time fixed in the contract were not shown, a stipulation for payment by the contractor of a stated sum per week after such time and until completion will be treated as one for liquidated damages and not as a penalty, and will be enforced. *Simpson Bros. Corporation* v. *John R. White & Son, Inc.* (C. C., R. I. 1911), 187 Fed. 418.

In its opinion the court says, "Under the rules stated in the *Sun Printing & Publishing Ass'n* v. *Moore,* 183 U. S. 642, 22 Sup. Ct. 240, the plaintiff must be held to its agreement." The latter was a case in which the parties had under consideration an estimate of the value of an undeterminable present fact, and having agreed upon the value of a yacht, were estopped by their contract to deny it later. In the instant case the parties had for consideration the value of an undeterminable future event, namely, the loss resulting from a failure to complete the building. In 9 MICH. L. REV. 588, the effect of the *Sun Ass'n* case on subsequent decisions involving a similar question is discussed, and it is pointed out that while some courts citing the *Sun Ass'n* case profess to follow its rule, in fact they are merely giving effect to the old "canon of interpretation" that if, independently of the stipulation, the damages would be uncertain, or incapable, or very difficult of ascertainment, the damages may be liquidated. The following cases are among the number: *Brooks* v. *City of Wichita,* 114 Fed. 297; *U. S.* v. *Alcorn,* 145 Fed. 995; *Turner* v. *City of Fremont,* 159 Fed. 221; *Blodget* v. *Col. Live Stock Co.,* 164 Fed. 305. Here, then, in the principal case the old rule in existence long before the *Sun Ass'n* case was determined, is made use of in fact, though the court says that it is following the latter case which had to do with an essentially different state of facts.

DEEDS—COVENANT TO STAND SEISED TO USES.—The complainant filed a bill to remove a cloud from his title and to construe an agreement executed with due formality by four sisters, joint owners of land, reciting that in case of the